

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF OLDHAM COUNTY WATER	)	
DISTRICT NO. 1 TO DEVIATE FROM CERTAIN	)	CASE NO.
PUBLIC SERVICE COMMISSION RULES AND	)	90-228
REGULATIONS	)	

O R D E R

On August 2, 1990, Oldham County Water District No. 1 ("Oldham District") applied for permission to deviate from the Commission's regulations. On October 1, 1991, after having considered Oldham District's application for deviation, the Commission ordered Oldham District to show cause why it should not be penalized for assessing unauthorized rates and why certain provisions of its tariff should not be changed to conform with Commission regulations. A hearing was held in this matter on November 20, 1991.

After reviewing the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Oldham District, a water district organized pursuant to KRS Chapter 74, was established on May 12, 1956. Its territory covers southern Oldham County, including the city of Pewee Valley.

2. In 1964 the Commission issued a Certificate of Public Convenience and Necessity to Oldham District to construct a water

distribution system and authorized the issuance of \$850,000 in revenue bonds to finance the construction of this system.<sup>1</sup> The Commission also established rates to be charged by Oldham District to the customers to be served by this system.

3. On July 9, 1964, Oldham District entered a Lease Agreement with Louisville Water Company ("Louisville Water"). Under this Lease Agreement, Oldham District let, leased, and demised to Louisville Water its "entire water distribution system" and any extensions thereto for a period of 40 years.<sup>2</sup> It further granted Louisville Water the option to renew the lease for a period of 60 years. The Lease Agreement provides Louisville Water "the exclusive right to serve any and all customers located within the boundaries of the District" and required Louisville Water "to supply the customers within the boundaries of the District."<sup>3</sup> It also specified "the rates to be charged by the [Louisville Water] Company for water service within the District."<sup>4</sup>

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<sup>1</sup> Case No. 4407, Application of Oldham County Water District No. 1 for (1) A Certificate of Public Convenience and Necessity; (2) Order Authorizing Issuance of Bonds; and (3) Order Authorizing Rate Tariff, Order dated October 19, 1964.

<sup>2</sup> Case No. 90-228, Oldham District's Response to the Commission's Order of October 5, 1990, Exhibit "O."

<sup>3</sup> Id. at Paragraph 4.

<sup>4</sup> Id. at Paragraph 6.

4. In its application for a Certificate of Public Convenience and Necessity, Oldham District also presented the Lease Agreement to the Commission. Oldham District contends that the Lease Agreement constituted a transfer of its distribution system to Louisville Water.<sup>5</sup> Louisville Water has contended that the Lease Agreement removes the Oldham District distribution system from Commission jurisdiction.<sup>6</sup>

5. The Commission refused to approve the Lease Agreement "insofar as said Lease and Agreement is in conflict with the jurisdiction of the Public Service Commission of Kentucky over the rates and services (including extensions not in the usual course of business) of Oldham County Water District No. 1 as well as the rules and regulations of the Public Service Commission applicable to all water utilities."<sup>7</sup>

6. The Commission has never revoked or modified its Order rejecting the Lease Agreement. No court of competent jurisdiction has suspended or vacated that Order. Oldham District did not undertake any appeal of that Order.

7. The Commission has never approved the Lease Agreement between Oldham District and Louisville Water.

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<sup>5</sup> Case No. 90-228, Oldham District's Response to the Commission's Order of October 5, 1990, Item 20.

<sup>6</sup> Case No. 4407, Transcript of Evidence ("T.E.") at 44-46.

<sup>7</sup> Case No. 4407, Order dated October 19, 1964 at 3.

8. Absent compliance with the Water Privatization Act, KRS 107.700-.760, a water district may not accomplish the transfer of its facilities or responsibility for the operation and maintenance of its facilities to any entity without Commission approval.

9. Upon completion of the construction of its water distribution system, Oldham District handed responsibility for its operation over to Louisville Water in accordance with the terms of the Lease Agreement. Since the water distribution system began operating in April 1965, Louisville Water has handled all applications for service, performed all customer billings, responded to all customer complaints, maintained and repaired the system, read all meters, and installed all service connections. Oldham District has not performed any actions related to the operation of its water distribution system. Its sole functions are to consult with Louisville Water regarding system extensions and to remit principal and interest payments to the holders of Oldham District's revenue bonds.

10. On May 5, 1969, Oldham District filed a schedule of rates for services provided to the customers of its distribution system. The Commission reviewed these schedules and stamped them "checked" on December 19, 1970. Oldham District has not amended or revised these rates.

11. Since 1969, the rates for water service to the customers of Oldham District's distribution system have been increased several times to reflect changes in the rates for water service charged by Louisville Water. Oldham District has not notified the Commission of these changes nor amended its filed rate schedules

to reflect these new rates. Louisville Water, as operator of the water distribution system and with Oldham District's acquiescence, raised these rates. Louisville Water collected these rates and retained all amounts collected, except for Oldham District's monthly surcharge fee and tapping fee which were remitted to the water district.

12. The rates currently charged to the customers of Oldham District's water distribution system for water service are not the rates set forth for such service in Oldham District's filed rate schedules.

13. Since 1969, tapping fees for new customers of Oldham District's distribution system have been increased several times to reflect increases in tapping fees assessed by Louisville Water. Oldham District has not notified the Commission of these changes nor amended its filed rate schedules to reflect these increased fees. Louisville Water, as operator of the water distribution system and with Oldham District's acquiescence, increased the tapping fee. The fee currently assessed by Louisville Water as the operator of Oldham District's water distribution to new customers of that system for tapping into the system is not the fee set forth in Oldham District's filed rate schedules.

14. KRS 278.160(2) prohibits a utility from charging or collecting greater or lesser compensation for any service rendered than that prescribed in its filed rate schedules.

15. Oldham District owns facilities used in connection with the pumping, distribution, and furnishing of water to the public.

It is a utility and is subject to the Commission's regulatory jurisdiction. KRS 278.010(3)(d) and 278.015.

16. Oldham District is not in compliance with KRS 278.160(2). Neither the arrangement between Louisville Water and Oldham District nor the unapproved Lease Agreement relieves Oldham District of its obligation to comply with the provisions of KRS Chapter 278. A public utility may not contract away its statutory obligations.

17. Oldham District Tariff Rule 1.28 provides that service may be terminated for non-payment if payment is not received within 15 days after billing. Commission Regulation 807 KAR 5:006, Section 11(3)(a), prohibits termination of service for nonpayment until 20 days after billing. Oldham District offered no reason why a shorter waiting period is required.

18. Oldham District Tariff Rule 1.28 is unreasonable and should be amended to conform with Commission Regulation 807 KAR 5:006, Section 11(3)(a).

19. Oldham District Tariff Rule 1.30 authorizes the discontinuance of service and the assessment of a fine of an indeterminate amount for any customer refusing to comply with its orders. It further allows the assessment of a fee for expenses incurred to discontinue service. Commission Regulation 807 KAR 5:006, Section 12, allows a utility to assess a fee no greater than the actual expense of discontinuing service. Oldham District offered no reason why a fine was required.

20. Oldham District Tariff Rule 1.30 is unreasonable insofar as it authorizes Oldham District to assess a fine of an

indeterminate amount and should be amended to conform with Commission Regulation 807 KAR 5:006, Section 12.

21. Oldham District Tariff Rule 3.04 requires an applicant for main extension to pay the entire cost of such extension. It allows for refunds not exceeding \$250 to the applicant when other customers tap-on the main extension. This rule is inconsistent with Commission Regulation 807 KAR 5:066, Section 12, insofar as it applies to all applicants for service. Commission Regulation 807 KAR 5:066, Section 12, requires water utilities to make main extensions of 50 feet to all prospective customers, except developers, at no cost. Commission Regulation 807 KAR 5:066, Section 12, requires refunds for subsequent tap-ons up to the amount of the applicant's contribution for the main extension. Oldham District contends this rule is reasonable because applicants for service have other methods of recovering the cost of the main extension.<sup>8</sup>

22. Oldham District Tariff Rule 3.04 is unreasonable. It requires a customer to pay more than the cost of service and allows the utility to recover an amount greater than the cost of service without providing any additional services. Oldham District Tariff Rule 3.04 should be amended to conform with Commission Regulation 807 KAR 5:066, Section 12.

23. Oldham District currently assesses a monthly surcharge of \$4 on each customer for the sole purpose of servicing the

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<sup>8</sup> Case No. 90-228, T.E., at 37-39.

principal and interest payments on its 1964 revenue bonds. Oldham District's 1990 Annual Report indicates that the proceeds from the surcharge are sufficient to retire all outstanding bonds and associated interest. In light of this information, a new proceeding should be initiated to investigate the reasonableness of the monthly surcharge.

24. Oldham District's customers are currently assessed a tap-on fee of \$750. Louisville Water retains approximately \$450 of that amount to cover the costs it incurs for service installation. the remaining \$300 is paid to Oldham District although Oldham District incurs no expense for a service installation. Commission Regulation 807 KAR 5:011, Section 10, states that non-recurring charges, such as tapping fees, are intended only "to recover the specific cost of the activity." Insofar as Oldham District's tap-on fee substantially exceeds the cost of service installation, a new proceeding should be initiated to investigate the reasonableness of the existing tap-on fee.

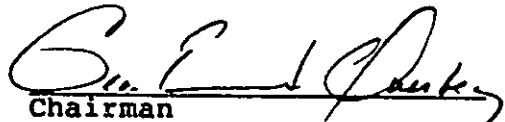
IT IS THEREFORE ORDERED that:

1. Within 30 days of the date of this Order, Oldham District shall file with the Commission rate schedules which reflect the rates for service currently being charged to customers of its water distribution system.

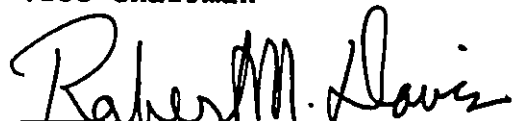
2. Oldham District shall immediately cease enforcement of Oldham District Tariff Rules 1.28, 1.30, and 3.04. Within 30 days of the date of this Order, it shall file a new tariff with the Commission containing rules that conform with Commission regulations as described herein.

Done at Frankfort, Kentucky, this 2nd day of April, 1992.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director, Acting